

Memorandum



Date: July 2, 2013

To: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Agenda Item No. 8(L)(51)

Subject: Authorizing First Amendment to Lease Agreement for Operation and Maintenance of the Power Substation for continuing connection of the Resources Recovery Facility to the Bulk Electric System (Electric Power Grid) Resolution No. R-573-13

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached First Amendment to the Lease Agreement between Florida Power & Light Company (FPL) and Miami-Dade County (Attachment A) to provide continuing operation and maintenance of the power substation necessary for the connection of the Resources Recovery Facility (RRF) to the Bulk Electric System (BES).

Scope

The leased property is a substation that transmits power from the RRF to Progress Energy, our current power purchaser. The substation is an essential part of RRF operations and RRF is the hub of the County's Solid Waste Management System that serves governmental and commercial customers Countywide.

Fiscal Impact/Funding Source

Electrical revenues from RRF operations totaled \$30.7 million in FY2011-12. Operation of the substation is critical to our continued ability to sell electric power. When the current power purchase agreement with Progress Energy expires later this year, revenues from power generation at RRF are expected to decline by up to 70 percent (\$21 million less revenue). The Public Works and Waste Management Department (PWWM) is currently working on alternative energy sales strategies to minimize this revenue loss.

Fees paid to FPL under the terms of the lease agreement for operation and maintenance of the power substation have averaged approximately \$17,000 per year. Fee payments are derived from Solid Waste Management Proprietary Funds.

Track Record/Monitor

The power substation has been successfully operated and maintained by FPL for over twenty years. Wieland Uchdorf, PhD, Facility Engineer, in the PWWM, will monitor this contract.

Delegated Authority

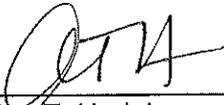
None.

Background

The RRF is a County-owned waste-to-energy facility that generates electric power for internal operations and off-site export to the BES. The RRF is operated and maintained for the County by Covanta Southeastern Florida Renewable Energy, Ltd. under a long-term agreement. The County also

owns the adjacent power substation (Doral Substation) by which the RRF is connected to the BES. The power substation is operated and maintained for the County by FPL.

The RRF has been in commercial operation since 1982. Power transmitted through the substation to the BES is sold to Progress Energy Corporation. Sale of electrical energy is a significant source of revenue to the County to fund the safe disposal of Municipal Solid Waste. The County entered into an Interconnection Agreement (R-1177-91) and a Lease Agreement (R-303-92) with FPL to operate and maintain the power substation (Attachment B). The Lease Agreement is a requirement of the Interconnection Agreement, but the Lease and the Interconnection Agreement have different expiration dates. The Lease Agreement expires on October 31, 2013 and the Interconnection Agreement expires on September 30, 2016. The Interconnection Agreement is automatically renewed in two-year increments in absence of prior written notice or mutual consent to terminate. The proposed First Amendment to Lease Agreement conforms the lease term to the term of the Interconnection Agreement assuring continuous, uninterrupted connection to the BES. All other elements of the Lease Agreement remain unchanged.



Alina T. Hudak
Deputy Mayor



MEMORANDUM

(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: July 2, 2013

FROM: 
R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(L)(51)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor

Agenda Item No. 8(L)(51)

Veto _____

7-2-13

Override _____

RESOLUTION NO. R-573-13

RESOLUTION APPROVING THE FIRST AMENDMENT TO THE LEASE AGREEMENT WITH FLORIDA POWER & LIGHT COMPANY FOR OPERATION AND MAINTENANCE OF A POWER SUBSTATION FOR CONTINUING CONNECTION OF THE RESOURCES RECOVERY FACILITY TO THE BULK ELECTRIC SYSTEM (ELECTRIC POWER GRID) AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF MIAMI-DADE COUNTY

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

WHEREAS, through Board Resolution R-1177-91, adopted October 15, 1991, the Miami-Dade County, formerly Metropolitan Dade County (County) and Florida Power & Light Company (FPL) entered into an Interconnection Agreement allowing interconnection of the Resources Recovery Facility to the Bulk Electric System; and

WHEREAS, through Board Resolution R-303-92, adopted on March 17, 1992, the County and FPL entered into a Lease Agreement for operation and maintenance of the power substation to facilitate interconnection of the Resources Recovery Facility to the Bulk Electric System (Attachment B); and

WHEREAS, these interdependent agreements have conflicting expiration dates; and

WHEREAS, the County and FPL desire to amend the term of the Lease Agreement to conform with the term of the Interconnection Agreement, as more specifically set forth in the First Amendment to the Lease Agreement, to assure continued connection to the Bulk Electric System (Attachment A),

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board Approves the First Amendment to Lease Agreement between Metropolitan Dade County (Lessor) and Florida Power & Light Company (Lessee) in substantially the form attached hereto and made part thereof, for the premises to be used as a power substation, and Authorizes the County Mayor or County Mayor's designee to execute the First Amendment to Lease Agreement for and on behalf of Miami-Dade County. The Mayor or designee is authorized to exercise any and all powers and options within the Agreement including termination.

The foregoing resolution was offered by Commissioner **Dennis C. Moss** , who moved its adoption. The motion was seconded by Commissioner **Xavier L. Suarez** and upon being put to a vote, the vote was as follows:

	Rebeca Sosa, Chairwoman	aye
	Lynda Bell, Vice Chair	aye
Bruno A. Barreiro	absent	Esteban L. Bovo, Jr. absent
Jose "Pepe" Diaz	aye	Audrey M. Edmonson aye
Sally A. Heyman	aye	Barbara J. Jordan aye
Jean Monestime	aye	Dennis C. Moss aye
Sen. Javier D. Souto	aye	Xavier L. Suarez aye
Juan C. Zapata	aye	

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of July, 2013. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK



By: **Christopher Agrippa**
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in blue ink, appearing to be "Th", is written over a horizontal line.

Thomas H. Robertson

FIRST AMENDMENT
to
LEASE AGREEMENT
between
METROPOLITAN DADE COUNTY, FLORIDA (Lessor)
and
FLORIDA POWER & LIGHT COMPANY (Lessee)

THIS "Amendment," dated as of this ___ day of _____, 2013, is made by and between Miami-Dade County (formerly Metropolitan Dade County), Florida, a political subdivision of the State of Florida, whose mailing address is 111 N.W. 1 Street, Suite 2910, Miami, Florida 33128-1994. Attn: County Mayor ("Lessor") and Florida Power & Light Company, a Florida corporation, whose mailing address is 4200 West Flagler Street, Miami, Florida 33134, Attn: Manager, Wholesale Services ("Lessee").

WHEREAS, Lessor and Lessee entered into and are parties to that Dade County Resource Recovery Facility Interconnection Agreement dated September 30, 1991 ("Interconnection Agreement"), and

WHEREAS, Lessor, by means of Resolution No. R-1177-91 duly passed by Lessor's Board of County Commissioners on October 15, 1991, approved and ratified the County Manager's execution of the Interconnection Agreement and authorized the County Manager to exercise renewal and cancellation provisions contained therein, and

WHEREAS, Lessor and Lessee entered into and are parties to a Lease Agreement ("Lease") dated April 1, 1992, regarding that certain real property located at N.W. 97th Avenue north of N.W. 58th Street, situated in Miami-Dade County, Florida, commonly known as the Doral Substation Property ("Premises"), and

WHEREAS, Lessor, by means of Resolution No. R-303-92, duly passed by Lessor's Board of County Commissioners on March 17, 1992, approved and ratified the County Manager's execution of the Lease, for the Premises to be used as a power substation, and further authorized the County Manager to exercise cancellation provisions contained therein, and

WHEREAS, the Term of the Lease expires on October 31, 2013, whereas the terms of the Interconnection Agreement extend beyond the Lease's expiration, and

WHEREAS, the obligations of Lessor and Lessee under the Interconnection Agreement are contingent upon the continued existence of the Lease, and

WHEREAS, to fulfill the obligations under the Interconnection Agreement, Lessor and Lessee desire to extend the term of the Lease;

NOW, THEREFORE, for mutual consideration, the receipt and adequacy of which is hereby acknowledged, the Lessor and Lessee hereby agree to amend the Lease as follows:

1. **Capitalized Terms.** All capitalized terms used and not otherwise defined herein shall have the meaning given to such terms in the Lease.

2. **Term of Lease.** Section 2 of the Lease is deleted in its entirety and replaced with the following provision:

TERM. The "Term" of this Lease shall commence on April 1, 1992, and shall terminate or expire concurrent with the termination or expiration of the Interconnection Agreement, or any successor agreement, unless this Lease is sooner terminated pursuant to any provision hereof.

3. **Termination of Agreements.** Section 20 of the Lease, entitled "TERMINATION." is deleted in its entirety.

4. **Counterpart.** This Amendment may be executed simultaneously or in counterparts, each of which together shall constitute one and the same Amendment.

5. **Remaining Terms.** Except as expressly amended herein, the Lease, as amended, shall remain in full force and effect as if the same had been set forth in full herein, and Lessor and Lessee hereby ratify and confirm all of the terms and conditions thereof.

[Remainder of page intentionally left blank]

[Signatures to follow on next page]

IN WITNESS WHEREOF, Lessor and Lessee have executed or caused this instrument to be executed as of the day and year first above written.

Lessor:

MIAMI- DADE COUNTY,
BOARD OF COUNTY COMMISSIONERS

By: _____
County Mayor

Attest: _____
Clerk of the Board

Lessee:

FLORIDA POWER & LIGHT COMPANY

By: _____

Title: VP - TRANSMISSION

Attest: _____

Q-8.6

Attachment B
M-15

Agenda Item No. 5(e)(15)
3-17-92

RESOLUTION NO. R-303-92

RESOLUTION AUTHORIZING ACCEPTANCE OF BID AND EXECUTION OF LEASE AGREEMENT AT N.W. 97 AVENUE, NORTH OF N.W. 58 STREET, MIAMI, WITH FLORIDA POWER & LIGHT COMPANY FOR PREMISES TO BE USED AS A POWER SUB-STATION; AND AUTHORIZING THE COUNTY MANAGER TO EXERCISE CANCELLATION PROVISIONS CONTAINED THEREIN

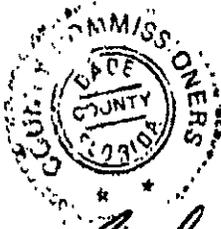
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, that this Board hereby accepts the Bid and approves the Lease Agreement between Dade County and Florida Power & Light Company, for premises to be used as a power sub-station, in substantially the form attached hereto and made a part hereof; and authorizes the County Manager to execute same for and on behalf of Dade County.

The foregoing Resolution was offered by Commissioner Mayor Stephen P. Clark, who moved its adoption. The motion was seconded by Commissioner Mary Collins, and upon being put to a vote, the vote was as follows:

Mary Collins	aye
Charles Dusseau	aye
Joseph M. Gersten	absent
Larry Hawkins	aye
Alexander Penelas	absent
Harvey Ruvin	aye
Arthur E. Teele, Jr.	absent
Sherman S. Winn	absent
Stephen P. Clark	aye

The Mayor thereupon declared the Resolution duly passed and adopted this 17th day of March, 1992.



DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

MARSHALL ADER, CLERK

Approved by County Attorney *[Signature]*
form and legal sufficiency

By: RAYMOND REED
Deputy Clerk

M E M O R A N D U M

Agenda Item No. 5(e)(15)

TO: Honorable Mayor and Members
Board of County Commissioners

DATE: March 17, 1992

FROM: 
Joaquim G. Avino, P.E., P.L.S.
County Manager

SUBJECT: Award of Bid and Lease
Agreement at N.W. 97
Avenue, North of N.W. 58
Street with Florida
Power and Light Company
Property No. 3016-01-18

The attached Lease Agreement has been prepared at the request of Department of Solid Waste and is recommended for approval.

PROPERTY: N.W. 97 Avenue, North of N.W. 58
Street, Miami.

OWNER: Dade County.

USE: 44,957 square feet of a power sub-
station.

JUSTIFICATION: Florida Power & Light Company (FPL) was the sole bidder for the lease to operate the power sub-station in order to transmit emergency power to the County's Resource Recovery Plant, which is adjacent to the subject sub-station; maintain the Plant's electrical requirements when the facility's own electrical generation equipment is down for maintenance or due to a forecast outage; and transmit exported power to Florida Power and Light Corporation's electrical power grid. FPL also has the capacity to either sell or buy electricity.

LEASE TERM: Twenty-one years and six months with
no renewal option periods.

RENTAL RATE: Annual rent is \$30.00.

LEASE CONDITIONS:

Lessee will maintain the facility, make all repairs as necessary and pay for all costs associated with performing its obligations under the terms of the lease.

EFFECTIVE DATES:

Commencing April 1, 1992 and terminating October 31, 2013.

CANCELLATION PROVISION:

Lessee may terminate by default or termination of the Interconnection Agreement upon thirty days written note to the Lessor.

COMMENTS:

The lease is contingent with the Dade County Resource Recovery Facility Interconnection Agreement dated September 30, 1991 and Specified Transmission Service also dated September 30, 1991, approved by Resolution No. R-11771-91, adopted by the Board on October 15, 1991.

LEASE AGREEMENT
between
METROPOLITAN DADE COUNTY, FLORIDA (Lessor)
and
FLORIDA POWER & LIGHT COMPANY (Lessee)

THIS "LEASE," dated as of April 1, 1992, is made by and between Metropolitan Dade County, Florida, a political subdivision of the State of Florida, whose mailing address is 111 N.W. 1 Street, Suite 2910, Miami, Florida 33128-1994, Attn: County Manager ("Lessor"), and Florida Power & Light Company, a Florida corporation, whose mailing address is P.O. Box 029100, Miami, Florida 33102-9100, Attn: Manager, Inter-Utility Markets ("Lessee").

WHEREAS, Lessor and Lessee have negotiated that Dade County Resource Recovery Facility Interconnection Agreement dated September 30, 1991 ("Interconnection Agreement"), attached as Exhibit "A", and that Agreement to Provide Specified Transmission Service dated September 30, 1991 ("Transmission Agreement"), attached as Exhibit "B", and

WHEREAS, Lessor, by means of Resolution No. R-1177-91 duly passed by Lessor's Board of County Commissioners on October 15, 1991, has approved and ratified the County Manager's execution of the Interconnection Agreement and the Transmission Agreement, and authorized the County Manager to exercise renewal and cancellation provisions contained therein;

NOW, THEREFORE, for mutual consideration, the parties agree as follows:

1. PREMISES. Lessor hereby grants to Lessee and Lessee accepts from Lessor for the term, at the rental, and upon all of the conditions set forth herein, a lease regarding that certain real property located at N.W. 97th Avenue north of N.W. 58th Street, described or designated in Exhibit "C", situated in Dade County, Florida, commonly known as the Doral Substation Property ("Premises"). The Premises contain and include:

- (a) all improvements thereon, facilities and appurtenances thereto, described on Exhibit "D"; and
- (b) the continuous and uninterrupted right of Lessee and its sublessees, tenants and licensees, and their respective officers, employees, business invitees, customers and patrons, of access to and from the Premises over and across any part(s) of Lessor's adjacent property which is not a part of the Premises, for any purpose related to the use and enjoyment of the Premises.

2. **TERM.** The "Term" of this Lease shall commence on April 1, 1992, and shall expire on October 31, 2013, unless this Lease is sooner terminated pursuant to any provision hereof.

3. **RENT.** Lessee shall pay to Lessor for the use of the Premises the amount of \$30.00 per year. Such payment shall be made to Lessor at the address stated herein or to such other person or at such other place as Lessor may designate by notice as provided herein.

4. **USE.** Lessee shall have exclusive access, control, operation and maintenance of the Premises and related facilities for conducting Lessee's business operation for fulfillment of its obligations under this Lease and for all other lawful purposes.

5. **LESSOR'S WARRANTY OF TITLE.** Lessor represents and warrants that:

- (a) Lessor is the sole owner in fee simple of the Premises and has full right and power to grant, execute and perform this Lease;
- (b) the Premises are now and will remain free and clear of all encumbrances which could adversely affect Lessee's leasehold estate;
- (c) the intended use of the Premises for purposes stated in Paragraph 4 is permitted by all applicable zoning laws and regulations; and
- (d) the Premises comply with all applicable ordinances, regulations and zoning and other laws.

6. **QUIET ENJOYMENT.** Lessor covenants and agrees that, so long as Lessee observes and performs all of the agreements and covenants required of it hereunder, Lessee shall peaceably and quietly have, hold and enjoy the Premises for the Term without any encumbrance or hindrance by Lessor. If Lessee's use of the Premises is limited or denied through rezoning, environmental impact edict, or other action of any public or quasi-public agency, this Lease, at the sole option of Lessee, may be terminated as of the effective date of such action.

7. **UTILITIES.** Lessor shall be responsible, and agrees to reimburse Lessee, for all utility costs, which shall include water, electricity and telephone. Lessor, at Lessee's option, shall at all times make provision at the Premises for adequate:

- (a) Heat and air conditioning; and
- (b) Hot and cold water.

8. SUCCESSORS AND ASSIGNS. This Lease shall inure to the benefit of, and shall be binding upon, the parties hereto and their respective successors and assigns, provided that this Lease shall not be assignable or transferable in whole or in part by either party without the written consent of the other party, which consent(s) shall not be unreasonably withheld, except that such written consent(s) shall not be required (a) in the case of an assignment or transfer to a successor in the operation of the assignor's or transferor's properties by reason of a merger, consolidation, sale or foreclosure, where substantially all such properties are acquired by such successor, or (b) in the case of an assignment or transfer of all or part of the assignor's or transferor's properties or interests to a wholly-owned subsidiary of the assignor or transferor or to another company in the same holding company as the assignor or transferor.

9. ALTERATIONS AND ADDITIONS. Lessee, without Lessor's consent and in accordance with Paragraph 11, may make any alterations, improvements, or additions in, on or about the Premises at Lessee's sole discretion in order to fulfill Lessee's obligations, or to exercise its rights, under this Lease. Lessee, at its option, may remove such alterations, improvements or additions made by it in, on or about the Premises. Lessee's personal property and its trade fixtures, including all machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, alterations, improvements or additions not removed by Lessee within a reasonable time after the end of the Term shall automatically become the property of Lessor. Lessee shall have no obligation to remove such items from the Premises at any time.

10. REPAIRS AND MAINTENANCE. Lessee shall make all repairs necessary and maintain the Premises at Lessor's cost in accordance with Paragraph 11.

11. RESPONSIBILITY FOR COSTS.

11.1 Lessor's Responsibilities. Lessor shall be responsible for, and agrees to reimburse Lessee for, costs reasonably incurred by Lessee in performing its obligations under this Lease, including, but not limited to:

- (a) All direct and indirect costs of labor, material, services and studies incurred by Lessee in connection with the ownership, design, construction, operation, maintenance, repair and removal of the Premises;
- (b) Payroll and other expenses of Lessee's employees incurred in connection with Lessee's performance of its obligation under this Lease, including allowances to reflect the costs of payroll-related taxes, insurance (including that related to Workers' Compensation, Employers' Liability and Unemployment Compensation Insurance), pensions, benefits and overheads. Overhead loading rates shall be

calculated in accordance with Lessee's then-current jobbing procedures, and may include indirect engineering and supervision expenses, and other overhead expenses;

- (c) Costs of labor, services and studies performed for Lessee by contractors, jobbers and consultants in connection with Lessee's performance of its obligation under this Lease, including allowances for overheads as provided in Item (a) above;
- (d) Costs of materials, supplies, tools, machines, equipment, apparatus and spare parts incurred in connection with Lessee's performance of its obligation under this Lease, including rental charges, transportation and stores expenses applicable to such costs; and
- (e) All federal, state and local taxes, impositions or assessments of any character, including property and income taxes, imposed upon Lessee in connection with Lessee's performance of its obligations under this Lease.

11.2 Lessee's Responsibilities. Lessee shall not be responsible for any costs and expenses incurred by Lessee in fulfilling its obligations pursuant to this Lease. Additionally, Lessee shall not be responsible for costs and expenses incurred by Lessor in fulfilling its obligations pursuant to this Lease. In the event that Lessee expands the Premises for purposes beyond interconnecting the Dade County Resource Recovery ("DCRR") Facility with Lessee's system as defined in Exhibit "A", Lessee shall be responsible for all costs and expenses incurred by Lessee for such expansion, including its operation and maintenance.

12. TAXES.

12.1 Payment of Taxes. Lessor shall be billed periodically an amount equal to the real estate taxes, assessments or other impositions, if any, for which Lessee is liable as a result of this Lease and Lessee's operation, maintenance, repair, replacement, removal and capital improvements of the Premises. Additionally, Lessor agrees to reimburse and indemnify Lessee and hold it harmless and make it whole for any and all local, Florida or federal income tax consequences resulting from this Lease, including, without limiting the generality of the foregoing, the payment of interest, penalties or additional tax.

12.2 Definition of "Real Estate Taxes". As used herein, the term "real estate tax" includes any form of assessment, license fee, rent tax, levy, penalty, or tax imposed by any authority having the direct or indirect power to tax, including any city, county, state or federal government, or any school, agricultural, lighting, drainage or other improvement district thereof, upon any legal or equitable interest of Lessor in the

Premises, upon Lessor's right to permit Lessee to use the Premises, or upon Lessee's use or occupancy of the Premises.

13. **INSURANCE.** Lessor shall itself or through its operating agent at the DCRR Facility, Montenay Power Corporation ("MPC"), a subsidiary of Montenay International Corporation ("MIC"), or any successor thereto, maintain throughout the Term policies of general (\$900,000) and excess (\$4 Million) liability insurance to provide comprehensive general liability coverage for Lessee and its officers, directors, employees, agents and contractors (hereinafter in this Lease collectively called the "Company"). The Company shall be designated as an additional named insured. The policies shall cover generally all liabilities which might arise under, or in the performance or nonperformance of, this Lease, including, but not limited to, casualty and liability insurance for the Premises.

In the event that such insurance becomes totally unavailable or the parties agree that it is only available at unreasonable cost, such unavailability shall not constitute an event of default under this Lease, but Lessee and Lessor shall enter into negotiations to develop substitute protection for the Company which Lessee deems adequate. Any premium assessment or deductible shall be for the account of Lessor and not the Company.

Lessor shall maintain or shall cause MPC, MIC or any successor to MPC as operator of the DCRR Facility, to maintain the subject policies or comparable substitutions therefor, as follows:

- (a) In the event that the policies are on "claims made" basis, the retroactive date of the policies shall be the effective date of this Lease or such other date as to protect the interest of the Company. Furthermore, if the policies are on a "claims made" basis, Lessor's providing of such coverage (through MIC, MPC or any successor) shall survive the termination of this Lease until the expiration of the maximum statutory period of limitations in the State of Florida for actions based in contract or in tort (currently, five years);
- (b) If coverage is on an "occurrence" basis, such insurance shall be maintained by Lessor (through MIC, MPC or any successor) during the entire Term of this Lease;
- (c) The policies shall not be cancelled or materially altered without at least thirty (30) days' written notice to Lessee;
- (d) Coverage must be reasonably acceptable to Lessee.

Lessor shall provide to Lessee evidence of such liability insurance coverage. A copy of the policies will be made available for inspection by Lessee within fifteen (15) days of a request to make such inspection.

14. INDEMNITY.

14.1 General. Lessor [to the extent permitted by Section 768.28, Florida Statutes (1991)] and Lessee shall each indemnify and save the other harmless from any and all claims, demands, costs, or expense for loss, damage or injury to persons or property on or about the Premises caused by, arising out of, or resulting from:

- (a) The negligence of a party or negligence of that party's contractors, agents, servants and employees; or
- (b) Any other event or act that is the result of, or proximately caused by, a party.

14.2 Environmental.

- (a) Lessor agrees to indemnify and save Lessee harmless from any and all claims, demands, costs, or expense for loss, damage or injury to persons or property when such claims for same are based on environmental impairment on or about the Premises and whether caused by, arising out of, or resulting from Lessor's operations or activities on or about the Premises or at or about the DCRR Facility.
- (b) Lessee agrees to indemnify and save Lessor harmless from any and all claims, demands, costs, or expense for loss, damage or injury to persons or property when such claims for same are based on environmental impairment on or about the Premises and are caused by, arising out of, or resulting from Lessee's operations or activities on or about the Premises.

15. DAMAGE OR DESTRUCTION. If the Premises are damaged or destroyed in whole or in part by fire or other casualty, Lessee shall, at Lessor's expense, repair and restore the Premises to a good tenable condition. Lessee shall commence and complete all work required to be done under this Paragraph 15 with reasonable promptness and diligence, but Lessee shall not be in default in any required performance if delay in performance results from fire, flood, storm, labor disputes, shortage of materials or transportation facilities, governmental regulations, war, act of God or other causes beyond Lessee's reasonable control. Lessee shall not be liable to Lessor for damage to the Premises caused by fire or other risks embraced within Lessor's insurance coverage, except to the extent that the same is due to a negligent act or omission of Lessee covered by Paragraph 14. If Lessee chooses not to commence the repair or restoration

within thirty (30) days after the damage or destruction occurs, or if repair or restoration will require more than one hundred twenty (120) days to complete, Lessee may, at Lessee's option, terminate this Lease by giving Lessor written notice of Lessee's election to do so at any time prior to the commencement of the repair or restoration. In that event, this Lease shall terminate as of the date of notice.

16. **CONDEMNATION.** If all the Premises or a substantial portion thereof is taken under the power of eminent domain, or sold under the threat of the exercise of said power (all of which are herein called "condemnation"), this Lease shall terminate at Lessee's option as of the date the condemning authority takes title or possession, whichever occurs first.

If any other taking adversely and substantially affects Lessee's use of the Premises, then Lessee may elect to terminate this Lease as of the date the condemning authority takes possession. Lessee's election to terminate shall be made in writing within thirty (30) days after Lessor has given Lessee written notice of the taking [or, in the absence of such notice, within thirty (30) days after the condemning authority has taken possession]. If Lessee does not terminate this Lease in accordance with this Paragraph 16, this Lease shall remain in full force and effect as to the portion of the Premises remaining. In addition, Lessee, at Lessor's expense, shall promptly repair any damage to the Premises caused by condemnation and restore the remainder of the Premises to the reasonable satisfaction of Lessee.

Any award or payment made upon condemnation of all or any part of the Premises shall be the property of Lessor, whether such award or payment is made as compensation for the taking of the fee or as severance damages; provided Lessee shall be entitled to the portion of any such award or payment for loss of or damage to Lessee's trade fixtures, removable personal property, and additions, alterations and improvements made to the Premises by Lessee, or for its loss of the lease herein created.

Lessor shall give notice to Lessee within five (5) days after receipt of notification from any condemning authority of its intention to take all or a portion of the Premises.

Notwithstanding anything, expressed or implied, to the contrary contained in this Lease, Lessee, at its own expense, may in good faith contest any such award for loss of or damage to Lessee's trade fixtures, removable personal property, and additions, alterations and improvements made to the Premises by Lessee, and for its loss of the lease herein created.

17. **DEFAULTS: REMEDIES.**

17.1 **Default by Lessee.** The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee where the failure continues for a period of thirty (30) days after written notice

thereof from Lessor to Lessee shall constitute a material default and breach of this Lease by Lessee; provided, however, that, if the nature of Lessee's default is such that more than thirty (30) days are reasonably required for its cure, then Lessee shall not be deemed to be in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

17.2 Default by Lessor. The failure by Lessor to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessor where the failure continues for a period of thirty (30) days after written notice thereof from Lessee to Lessor shall constitute a material default and breach of this Lease by Lessor; provided, however, that, if the nature of Lessor's default is such that more than thirty (30) days are reasonably required for its cure, then Lessor shall not be deemed to be in default if Lessor commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

17.3 Termination upon Default. If either party defaults in the performance of any of the obligations or conditions required to be performed by it under this Lease, the non-defaulting party may, after giving written notice as provided above, either cure the default and the defaulting party shall reimburse the curing party, or the non-defaulting party may elect to terminate this Lease upon giving thirty (30) days' written notice to the defaulting party of its intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless the defaulting party has meanwhile cured the default. Termination is not, however, to be the non-defaulting party's sole remedy, and the non-defaulting party may also pursue those remedies available to it under Florida law.

18. HOLDING OVER. If Lessee remains in possession of the Premises after the expiration or termination of this Lease, Lessor and Lessee shall renew this Lease as allowed by law.

19. LESSOR'S ACCESS. Lessor's only access to the Premises shall be subject to Lessee's express consent, and no representative(s) of Lessor may enter the Premises unless accompanied by representative(s) of Lessee.

20. TERMINATION. In the event of termination of the Interconnection Agreement or the Transmission Agreement, Lessee may terminate this Lease upon thirty (30) days' written notice to Lessor.

21. NOTICES. Any notice contemplated by this Lease shall be made in writing and shall be delivered either in person, by prepaid telegram, by telex or facsimile transmission, or by deposit in the United States mail, first class, postage prepaid to:

Lessor: County Manager
Metropolitan Dade County
111 N.W. 1 Street, Suite 2910
Miami, Florida 33128-1994

Lessee: Florida Power & Light Company
P. O. Box 029100
Miami, Florida 33102-9100
Attention: Manager,
Inter-Utility Markets

Either party's designation of the person(s) to be notified or the address(es) of such person(s) may be changed by such party at any time, or from time to time, by similar notice.

22. RECORDING. The parties hereto agree to execute a memorandum for recording purposes in lieu of recording the entire Lease, if requested by either party.

23. SEVERABILITY; CHOICE OF LAW. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof. This Lease shall be governed by the laws of the State of Florida. The language in all parts of this Lease shall be construed as a whole according to its fair meaning, and not strictly for or against either Lessor or Lessee.

24. EFFECT OF WAIVERS. Any waiver at any time by either party hereto of its rights with respect to the other party, or with respect to any matter arising in connection with this Lease, shall not be considered a waiver with respect to any subsequent default or matter.

25. CUMULATIVE REMEDIES. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

26. BINDING EFFECT. This Lease shall bind the parties hereto and their personal representatives, successors and assigns.

27. ENTIRE AGREEMENT. This Lease is intended as the exclusive, integrated statement of the agreement between the parties. Parol or extrinsic evidence shall not be used to vary or contradict the express terms of this Lease. This Lease shall not be amended or modified, and no waiver of any provision hereof shall be effective, unless set forth in a written instrument executed by the parties.

28. RADON GAS. Radon is a naturally occurring gas that, when it has accumulated in a building in sufficient quantities, may present health risks to person(s) who are exposed to it over time. Levels of radon that exceed federal and state guidelines

have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from Lessor's Public Health Unit.

29. MISCELLANEOUS.

29.1 Attachments, Headings, Terms. All attachments referenced herein are hereby incorporated by reference into this Lease. The headings and underscorings contained herein are for convenience purposes only and shall not be used to interpret, nor be deemed to extend or limit, the specific sections. The word or words enclosed in quotation marks shall be construed as defined terms for purposes of this Lease. The terms "Lessor" and "Lessee" shall be construed to mean, when required by the context, the directors, officers, employees, invitees, licensees, contractors, materialmen, servants and agents of Lessor and Lessee.

29.2 Execution and Delivery. This Lease shall not be binding or confer any rights upon either party unless and until executed and mutually delivered by and between both parties.

29.3 Relationship of Parties. This Lease does not create the relationship of principal and agent or a partnership or joint venture, or of any association other than that of Lessor and Lessee.

29.4 Time of the Essence. Time is of the essence in this Lease.

IN WITNESS WHEREOF, the parties hereto have executed or caused this instrument to be executed as of the day and year first above written.

Lessor:
METROPOLITAN DADE COUNTY,
BOARD OF COUNTY COMMISSIONERS

By: _____
County Manager

Attest: _____
Clerk of the Board

Lessee:
FLORIDA POWER & LIGHT COMPANY

By: *R. L. Taylor*
R. L. Taylor

Title: Vice President, Power Delivery

Attest: *Robert L. Seely*
Robert L. Seely